GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

HM&FW Department – Posts of Medical Officer / Lecturers in AYUSH Department (i.e Ayurveda / Unani and Homeo Systems) - Declared as State wide post – Rescinding of G.O.Ms.No.41, HM&FW(I2) Department, dated:04-02-2008 with immediate effect – Orders – Issued.

HEALTH, MEDICAL AND FAMILY WELFARE (F.2) DEPARTMENT

G.O.Rt.No.467 **Dated:14.06.2022.**

Read the following:-

1. G.O.Ms.No.578, M&H Deptt., Dt:16-06-1976.
2. G.O.Ms.No.558, M&H Deptt., Dt:29-03-1986.
3. G.O.Ms.No.489, M&H Deptt., Dt:16-09-1991.
4. G.O.Ms.No.41, HM&FW(I2) Deptt., Dt:04-02-2008.
5. From the Commissioner of AYUSH,A.P. Vijayawada, e-file bearing computer No.428002

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ORDER:-

In the G.O., 1st read above orders were issued declaring the posts of Junior Vaids (i.e Medical Officers) in the Department of AYUSH (i.e Ayurveda / Unani and Homeo Systems) as Zonal posts in accordance with the provisions of Presidential orders.

2. In the G.O., 2nd read above, orders, were issued declaring the posts of Medical Officers & Lecturers (i.e the then Vaids) as Gazetted.

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3. In the G.O., 3rd read above, orders, were issued declaring the posts of Medical Officers & Lecturers i.e the then Vaids in AYUSH Department as State-wide posts.

4. In the G.O., 4th read above, since the Government felt that the orders issued in the G.O.3rd read above [i.e declaring the posts of Medical Officers an Lectures (the then Vaids) as State-wide posts] are against the spirit of the Presidential order. Further, the G.O., 3rd read above being an Executive order, cannot override the presidential Order which is a statute, orders were issued rescinding the orders issued in the G.O., 3rd read above.

5. In the letter 5th read above, the Commissioner of Ayush has reported that keeping in view of the orders dated:03.03.2017 of Hon'ble High Court in W.P.No.31936/2016, there is adequate justification to reconsider the decision to the Medical officer / Lecturer (Now Assistant Professors) posts as Zonal cadre posts. The Commissioner of Ayush, A.P., has therefore requested to the Government to issue suitable orders to reconsider the State / Zonal Cadre status of Medical officer / Lecturer (Now Assistant Professors) posts in Ayush Department and the said Posts were recently notified by the APPSC.

6. The observations of the Hon'ble High Court in its orders dated:03.03.2017 in WP.No.31936 of 2016 on whether the post Medical Officer / Lecturer was state wide post or Zonal Post is as follows:

"The case on hand presents a classic example of the insensitivity and callousness that the State is capable of displaying while dealing with its employees. The Andhra Pradesh Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975, or the Presidential Order, came into effect in October, 1975. At that time, the posts in Ayurveda Medical Service were governed by G.O.Ms.No.3585 dated 23.11.1964. This G.O was not produced before this Court by either side and its contents remain in the realm of the unknown. Further, the State produced no material before this Court to substantiate its claim that the posts of Medical Officer, which included Lecturers posts also at that point of time, were organized in local cadres in terms of the Presidential Order at that stage. The power of the State Government to organize local cadres, under Para 3(1) of the Presidential Order, expired on 17.1.1978. Thereafter, the State Government no longer had the power to organize classes of posts in civil services under the State into different local cadres for different parts of the State.

In any event, it is the admitted position that in the year 1980, the posts of Medical Officer and Lecturer in Ayurvedic Medical Service were declared as gazetted posts. This fact also supports the conclusion drawn by this Court that these posts were not localized under the Presidential Order. Had it been so, the State would have taken steps immediately to get them included in the specified gazette categories of posts in Schedule III to the Presidential Order. No such steps were taken. Significantly, in the 'Andhra Pradesh Indian Medicine and Homeopathy Service Rules', promulgated under G.O.Ms.No.265,

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dated 30.06.1994, there is no indication that any localization of these posts was made in the context of the Presidential Order. This was obviously because, by the said date, these posts were gazetted posts and as they did not find place in Schedule III to the Presidential Order, they were not covered by it. Unless a gazetted post is shown in the specified gazette categories of posts in Schedule III to the Presidential Order or is notified by the Central Government to be so included, the question of organizing a local cadre in relation to such a gazetted post would not arise under Paragraph 3(4) of the Presidential Order. The guidelines relating to organization of local cadres in respect of posts under the Government of Andhra Pradesh and for allotment of persons holding such posts to the local cadre to be so organized, promulgated by the Government of Andhra Pradesh vide G.O.Ms.No.728, dated 01.11.1975, also spoke of only the posts belonging to each specified gazetted category in each department in each zone being organized into a separate local cadre. Even if the posts of Medical Officer and Lecturer in the Ayurvedic Medical Service were not gazetted posts as on the date of the Presidential Order, once they were declared to be gazetted posts in the year 1980, they had to be included in Schedule III, by way of a separate notification issued by the Central Government. No steps were taken in this regard by the erstwhile Government of Andhra Pradesh. Schedule III to the Presidential Order does not include the gazette posts of Medical Officer and Lecturer in the Ayurvedic Medical Services even as on date. They therefore stand excluded from the purview of the Presidential Order. With this clear and correct understanding, the Government of Andhra Pradesh issued G.O.Ms.No.489 dated 16.08.1991 declaring the posts of Medical Officers and Lecturers in Ayurvedic Medical Service to be State-wide posts for the purpose of recruitment, posting and transfers. Thereafter, as the general rules under G.O.Ms.No.265 dated 26.05.1994 were superseded in so far as Ayurvedic Medical Service was concerned and the Special Rules titled "The Andhra Pradesh Ayurvedic Medical Service Rules, 2005" were promulgated in exercise of the power conferred by the proviso to Article 309 of the Constitution, vide G.O.Ms.No.67 dated 14.03.2005, the Government reiterated therein that the unit of appointment for the posts of Medical Officer and Lecturer in Ayurvedic Medical Service was the State. Surprisingly, the Government of Andhra Pradesh then issued G.O.Ms.No.41 dated 04.02.2008, without even referring to the Special Rules framed under G.O.Ms.No.67 dated 14.03.2005, and rescinded G.O.Ms.No.489 dated 16.09.1999, declaring that treating these posts as State-wide posts was against the Presidential Order.

However, in the light of the analysis supra, this later opinion of the Government that these posts should be treated as zonal posts covered by the Presidential Order was contrary to the correct understanding of the authorities earlier, as evidenced by the Special Rules framed under G.O.Ms.No.67 dated 14.03.2005 in exercise of constitutional power. Once these posts were declared to be gazette posts, they necessarily had to be included in the specified gazetted categories in Schedule III to the Presidential Order and in the absence thereof, they stood excluded from the localization of cadres required under the Presidential Order. The present stand of the authorities to the contrary is therefore unsustainable".

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7. The Commissioner, AYUSH., A.P., has also reported that the Medical Officer / Lecturer posts were not included in the specified gazette categories of posts in schedule III to Presidential Order.

8. In view of the above, after careful examination of the matter, Government, hereby order that the posts of Medical Officers / Lecturers in the three system of Indian Medicine and Homoeopathy viz., Ayurveda, Unani and Homoeo shall be "State-wide Posts" for the purpose of recruitment, posting and transfers by rescinding the orders issued in the G.O., 4th read above (i.e G.O.Ms.No.41, HM&FW(I2) Deptt., Dt:04-02-2008.) with immediate effect.

9. The Commissioner, AYUSH A.P., shall take necessary action in the matter accordingly.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

MUDDADA RAVI CHANDRA
PRINCIPAL SECRETARY TO GOVERNMENT

To:
The Commissioner of Ayush, A.P., Gollapudi, Vijayawada
Copy to:
The PS to Hon'ble Minister (HFW&ME)
The P.S to Prl.Secy.to Govt., HM&FW Department.
Sf/Sc.

// FORWARDED :: BY ORDER //

SECTION OFFICER